IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 138 of 2005

Date of decision: 31st October, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 138 of 2005

1. Rajiv Rawal S/o Sri Tilak Raj.
2. Risabh Rawal S/o Sri Rajiv Rawal,
through natural guardian and father
Sri Rajiv Rawal,
R/o Mangal Kutir, Ramnagar Road,
Kashipur, District Udham Singh Nagar…… Appellants

Versus

1. Sri Man Singh S/o Sri Paltu Singh,
R/o Village Sarkara Karim,
Tehsil & P.S. Thakurdwara, District Moradabad,
(Driver of Bus No. UP06-0476).
2. Sri Vinod Kumar Sharma S/o Sri Ishwar Datt Sharma,
R/o Village Garhi Negi, P.S. Kashipur,
District Udham Singh Nagar
(Registered Owner of Bus No. UP06-0476).
3. National Insurance Company Ltd.,
Branch Kashipur, District Udham Singh Nagar,
Through Branch Manager,
Kashipur Branch,
District Udham Singh Nagar
(Insurer of Bus No. UP06-0476). …….. Respondents

Mr. B.S. Parihar, Advocate for the appellants.
None for respondents Nos. 1 & 2.
Mr. D.S. Patni and Mr. Manish Dalakoti, Advocates for respondent No. 3.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C. J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C. J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal/ Addl. District Judge, Udham Singh Nagar vide Award dated 03.01.2005 passed in M.A.C.P. No. 135 of 2003.

2. The claimants, who are unfortunate husband and minor son of deceased Smt. Ritu Rawal, claimed compensation of Rs. 44,67,000/- for her death in the motor accident on 16.01.2003, when the Cycle

Rickshaw, in which she was going to her school, was dashed by the offending vehicle Bus bearing registration No. UP-06/0476 resulting in serious injuries to Smt. Ritu Rawal, who succumbed to those injuries during the course of her treatment in the hospital the same day. The claimants pleaded that deceased Ritu Rawal used to earn Rs. 13,000/- per month as salary from the school and tuition.

3. The owner, driver and insurer of the offending vehicle Bus contested the claim and denied their liability to pay compensation to the claimants. The owner and the driver took the plea that the Rickshaw Puller himself was negligent and as such, was responsible for the accident. The insurer of the offending vehicle Bus, on the other hand, pleaded that the Bus was being plied in breach of the policy conditions.

4. The claimants examined PW1 Rajiv Rawal, PW2 Rajiv Ghai and PW3 Manish Kharbanda in support of their claim, whereas the owner, driver and insurer of the Bus did not examine any witness.

5. The Tribunal, on a close scrutiny of the evidence led by the parties, held that deceased Ritu Rawal died on account of the injuries sustained by her in the motor accident on 16.01.2003; the accident occurred due to the rash and negligent driving of the driver of the Bus; and the insurer of the Bus was liable to pay compensation to the claimants.

6. The Tribunal assessed the income of the deceased at Rs. 43,161/- per annum on the evidence led by the claimants about her income, including her Income Tax Returns. By deducting about 1/3rd of the said amount as her personal expenses, the claimants' dependency was assessed at Rs. 28,000/- per annum. By multiplying the annual dependency of Rs. 28,000/- with the multiplier of '13', the compensation was worked out to Rs. 3,74,000/- (there is an apparent

computation mistake as Rs. 28,000/-, when multiplied by '13', will come to Rs. 3,64,000/- and not Rs. 3,74,000/- as recorded in the Award). By awarding Rs. 2,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Consortium, the Tribunal awarded a total sum of Rs. 3,81,000/- as compensation to the claimants for the death of Smt. Ritu Rawal in the motor accident. The Tribunal, further, directed the insurer of the offending vehicle Bus to pay interest at the rate of 6% per annum from the date of the claim petition (14.05.2003).

7. Mr. B.S. Parihar, the learned counsel for the appellants submitted that the Tribunal has erred in assessing the income of the deceased at Rs. 43,161/- per annum only; in selecting the lower multiplier of '13'; and in awarding interest at the lower rate of 6% per annum.

8. Mr. D.S. Patni and Mr. Manish Dalakoti, the learned counsel for respondent No. 3 National Insurance Company Ltd., on the other hand, submitted that the Tribunal has been quite liberal in awarding substantial compensation of Rs. 3,81,000/- to the claimants and as such, no enhancement is warranted in this appeal.

9. The findings recorded by the Tribunal that deceased Ritu Rawal died on account of the injuries sustained by her in the motor accident on 16.01.2003; the accident occurred due to the rash and negligent driving of the driver of the Bus; and the insurer of the Bus was liable to pay compensation to the claimants, have now attained finality as the respondents have not filed any appeal against the Award.

10. Deceased Smt. Ritu Rawal was working as Principal in Sri Guru Nanak Senior Secondary School, Kashipur. The claimants have filed her Income Tax Returns for the Assessment Years 2002-2003 and 2003-2004. Her Income Tax Return for the Assessment Year

2003-2004 reveals that her income from salary was Rs. 64,742/- and by deducting the 'notional standard deduction' of Rs. 21,581/-, the balance amount was recorded as Rs. 43,161/-. The Tribunal, apparently, has fallen into error in taking this amount of Rs. 43,161/- as her income from salary, whereas in fact her income from salary was Rs. 64,742/-. Her Income Tax Return further makes it apparent that she had disclosed income of Rs. 12,000/- from tuition, which was not taken into consideration by the Tribunal. Thus, her total income comes to Rs. 76,742/- (Rs. 64,742/- from salary + Rs. 12,000/- from tuition). We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 76,742/-.

11. As the deceased was working as Principal in a Senior Secondary School, she must be spending substantial amount on herself. We, therefore, deem it proper to deduct a sum of Rs. 36,742/- as her personal expenses and assess the claimants' dependency at Rs. 40,000/-.

12. The multiplier of '13' selected by the Tribunal, in the facts of the case, appears to be on the higher side. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Court should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in (**2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances

> that the deceased might have got better employment or income or might have lost his employment or income together.
>
> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
>
> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in the region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

13. Considering that the age of the deceased, her husband and her minor son was 38 years, 43 years and 14 years respectively; and the dependency of the claimants has been assessed at Rs. 40,000/- per annum, multiplier of '11', in view of the above-quoted dictum of the Apex Court, would be appropriate in the present case.

14. By multiplying the annual dependency of Rs. 40,000/- with the multiplier of '11', the compensation works out to Rs. 4,40,000/-. The claimants are further entitled to receive Rs. 5,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Consortium to the husband. Thus, the claimants become entitled to receive a total sum of Rs. 4,50,000/- as compensation for the death of Smt. Ritu Rawal in the motor accident.

15. For the foregoing reasons, the appeal filed by the claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 3,81,000/- awarded by the Tribunal is enhanced to Rs. 4,50,000/-(Rupees Four Lakhs and fifty Thousand only). We,

further, award quantified interest of Rs. 11,000/- (Rupees Eleven Thousand only) on the enhanced amount of compensation of Rs. 69,000/-.

16. Respondent No. 3 National Insurance Company Ltd. is directed to deposit the enhanced amount of Rs. 69,000/- (Rupees Sixty Nine Thousand only) and quantified interest of Rs. 11,000/- (Rupees Eleven Thousand only) before the concerning Claims Tribunal within a period of two months from today.

17. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C. J.)**
31.10.2006 31.10.2006

G